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THOMAS F. MCFARLAND

July 27, 2007

By e-filing

Vernon A. Williams, Secretary  
Surface Transportation Board  
Case Control Unit, Suite 713  
1925 K Street, N.W.  
Washington, DC 20423-0001

Re Finance Docket No. 34915, *Lincoln Lumber Company* -- *Petition for Declaratory Order -- Condemnation of Railroad Right-of-Way for a Storm Sewer*

Dear Mr. Williams

This refers to the letter to you dated July 23, 2007 from Joseph Rupp, Esq., Assistant City Attorney, City of Lincoln, Nebraska regarding the above proceeding

Mr. Rupp has mischaracterized the order of the District Court of Lancaster, Nebraska in its Case No. CI06-3821, *City of Lincoln v. Lincoln Lumber Company*, entered on July 18, 2007. Contrary to Mr. Rupp's contention, that Order was not a ruling on the merits of the controversy in that Case. Instead, the Court merely denied Lincoln Lumber Company's motion for a preliminary injunction. Evidence before the Court was restricted to affidavits. Such evidence was far short of that which would be presented in a trial on the merits. The Court made no findings of fact nor conclusions of law in the order. The Court's observation that "(i)t is unlikely that the Board would find that the storm sewer is federally preempted" (Order at 2), does not purport to be binding on the Board. Indeed, the Board's expertise, as sought in the Petition for Declaratory Order, is required to resolve that issue. Thus, the Board should institute the proceeding sought in that Petition.

Very truly yours,

*Tom McFarland*

Thomas F. McFarland  
Attorney for Lincoln  
Lumber Company

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